

# Staff Summary Report

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**Council Meeting Date:** 12/12/2002

**Agenda Item Number:** 25

**SUBJECT:** Authorization to enter into an Intergovernmental Cooperative Purchasing Agreement between the City of Phoenix and the Regional Public Transportation Authority (RPTA) in order to realize the benefits of cooperative purchasing, lower prices, higher quality products and services, and a reduction in the overall costs of administration.

**DOCUMENT NAME:** 20021212fslg02 PURCHASES (1004-01)

**SUPPORTING DOCS:** Yes

**COMMENTS:** N/A

**PREPARED BY:** Lisa Goodman, Procurement Officer, 480-350-8533

**REVIEWED BY:** Ron Gauthier, CPPO, Central Services Administrator, 480-350-8405

**LEGAL REVIEW BY:** Marlene Pontrelli, City Attorney, 480-350-8120

**FISCAL NOTE:** Funding sources include the transit program and federal transit grants, which are programmed in the operating and capital budgets.

**RECOMMENDATION:** Authorize the Intergovernmental Cooperative Purchasing Agreement.

**ADDITIONAL INFO:** The City of Phoenix and Regional Public Transportation Authority competitively bid the purchase of buses, a vehicle management system, and other transit system components. An authorized Intergovernmental Cooperative Purchasing Agreement will allow all three signed parties to participate and realize the benefits of cooperative purchasing and the free exchange of information, technology, and other services that may assist in improving the efficiency or economy of the procurement of goods and services.

**APPROVED BY:** Carlos de Leon  
Transit Manager

Lisa Goodman  
Procurement Officer

**AGREEMENT NO. \_\_\_\_\_**

**Intergovernmental Cooperative Purchasing Agreement  
(City of Phoenix, City of Tempe, and the  
Regional Public Transportation Authority)**

THIS INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENT ("AGREEMENT") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between the CITY OF PHOENIX, a municipal corporation duly organized and existing under the laws of the State of Arizona, acting by and through its Public Transit Department, which Department is located at 302 North 1<sup>st</sup> Avenue, Suite 700, Phoenix, Arizona 85003 (hereinafter referred to as "PHOENIX"), the CITY OF TEMPE, a municipal corporation duly organized and existing under the laws of the State of Arizona (hereinafter referred to as "TEMPE"), and, the REGIONAL PUBLIC TRANSPORTATION AUTHORITY, a public agency duly organized and existing pursuant to Section 48-5101, et seq., Arizona Revised Statutes, and doing business as Valley Metro (hereinafter referred to as "RPTA").

**RECITALS**

WHEREAS, cooperative purchasing agreements between and among public agencies in the State of Arizona may lower the prices and improve the quality of goods and services purchased by the agencies, and may avoid duplication of effort and reduce overall costs of administration; and,

WHEREAS, the parties are authorized to enter into this Cooperative Purchasing Agreement by their respective charters and ordinances and by §§ 11-952 and 41-2632, Arizona Revised Statutes; and,

WHEREAS, the parties desire to realize the benefits of cooperative purchasing and the free exchange of information, technology, and other services that may assist in improving the efficiency or economy of the procurement of goods and services including the benefits of complying with §§ 11-952 and 41-2632, Arizona Revised Statutes; NOW, THEREFORE,

**AGREEMENT**

IT IS HEREBY AGREED, by and between the parties, as follows:

**Section 1.** The purpose of the Agreement is to establish a cooperative purchasing agreement for the procurement of materials and services desired or required by the parties.

**Section 2.** The initial term of this Agreement shall begin on \_\_\_\_\_, 2002, and shall end on \_\_\_\_\_, 2005. Thereafter the parties may, by mutual agreement, extend the term of this Agreement, for a term and in a manner as may be approved by the City Councils of Phoenix and Tempe and the governing body of RPTA.

**Section 3.** Participation by any party in a specific bid or proposal shall be at the sole discretion of the participating party and shall be in accordance with the terms and conditions of the bid or proposal, except as may otherwise be allowed or required by law.

**Section 4.** The ordering, shipping, receiving, inspection and acceptance of goods and services, and payment for goods and materials shall be the sole and exclusive obligation of the procuring party. The procuring party shall make timely payments to any vendor for goods and services in accordance with the terms and conditions of the procurement. In accordance with the foregoing, no non-procuring party shall be liable in any fashion for any failure or breach by a procuring party. The procuring party shall hold all non-procuring parties harmless from any liability which may arise from any action or inaction of the procuring party.

**Section 5.** No party shall use this Agreement as a method for obtaining additional concessions or reduced prices for similar materials and services without the participation of the other parties.

**Section 6.** The exercise of any rights or remedies by a procuring party shall be the exclusive right and obligation of that party, and the failure of a procuring party to secure performance under its purchase order shall not require the other parties to exercise their own rights or remedies nor prohibit the other parties from exercising their own rights or remedies.

**Section 7.** The parties recognize that: (a) while different procurement rules may apply to each of them, each acknowledges that they believe, but do not warrant, that their respective procurements comply with all applicable procurement rules and laws governing that party; (b) a full and complete copy of the procurement documentation for each acquisition shall be made available by the procuring party to the other participants in this Agreement. Thus, each party shall have the opportunity to independently evaluate the procurement process for compliance with all applicable laws, rules and regulations; and, (c) each party shall be responsible for independently determining that the subject procurements do, in fact, comply with the laws, rules and regulations applicable to them.

**Section 8.** At the sole option and discretion of the providing party, each party shall make available to the other parties, upon reasonable request and subject to mutual convenience, necessity and, in appropriate circumstances for a mutually-agreed upon reasonable fee or charge, any warehousing facilities, equipment, personnel, information, technology, or other goods, equipment or services which may assist in improving the efficiency or economy of each party's procurement or disposal of goods or services. Such warehousing facilities, equipment, personnel, information, technology, or other goods, equipment or services shall be provided only on a short term, temporary basis for the sole purpose of facilitating the procurement or disposal of goods, materials or other tangible property.

**Section 9.** Each non-breaching party shall be excused from any further performance or compliance with the terms of this Agreement upon a material breach of the Agreement by a breaching party. Further, except as provided in Section 15, below, any party may terminate its

participation in this Agreement by giving thirty (30) calendar days prior written notice to each of the other parties.

**Section 10.** The following language shall be included in any contract resulting from a procurement covered by this Agreement.

Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

**Section 11.** Pursuant to A.R.S. § 41-2632 (A), this Agreement is exempt from the requirements of A.R.S. § 11-952, subsections D and F.

**Section 12.** This Agreement shall take effect after execution by the participating parties. Pursuant to A.R.S. Section 41-2632 this Agreement need not be filed with the County Recorder or the Secretary of State to be effective, except as may be required by the laws, rules and/or regulations of a participating public agency.

**Section 13.** This Agreement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. Further, it is understood and agreed by the parties that no party is the agent of the other and no party is authorized to act on behalf of any other party.

**Section 14.** This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms, may not be modified or changed except in writing signed by both parties.

**Section 15.** The parties hereto acknowledge that this Agreement is subject to cancellation by any of the parties pursuant to the provisions of A.R.S. § 38-511.

**Section 16.** The parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and, further, that no member or delegate to Congress, member of the PHOENIX or TEMPE City Councils, or RPTA's Board, or any employee of PHOENIX, TEMPE or RPTA, has any interest, financial or otherwise, in this Agreement.

**Section 17.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.

**Section 18.** Any notice, consent, or other communication ("NOTICE") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for PHOENIX:

Robert G. Bisho  
Deputy Finance Director  
251 W. Washington St.  
Calvin Goode Bldg. 8<sup>th</sup> Floor.  
Phoenix, AZ 85003  
Telephone: (602)262-7790  
FAX: (602) 534-4726

If intended for TEMPE:

Lisa Goodman  
Procurement Officer  
20 E. Sixth Street, Second Floor  
Tempe, AZ 85281  
Telephone: (480)350-8533  
FAX: (480) 350-8990

If intended for RPTA:

G. Kenneth Driggs  
Executive Director  
Regional Public Transportation Authority  
302 N. First Ave., Suite 700  
Phoenix, Arizona 85003  
Telephone: (602) 262-7242  
FAX: (602) 495-2002

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

**Section 19.** This Intergovernmental Cooperative Purchasing Agreement shall become effective upon approval of the City Councils of PHOENIX and TEMPE and the governing body of RPTA and upon execution by the authorized representatives of each of the parties. Pursuant to A.R.S. § 41-2632 this Agreement need not be filed with the County Recorder or the Secretary of State to be effective, except as may be required by the laws, rules and/or regulations of a participating public agency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinbefore indicated.

CITY OF PHOENIX  
FRANK FAIRBANKS, City Manager

CITY OF TEMPE  
NEIL G. GIULIANO, Mayor

By \_\_\_\_\_

By \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney

\_\_\_\_\_  
City Attorney

REGION PUBLIC TRANSPORTATION AUTHORITY

By \_\_\_\_\_  
(Name)

ATTEST:

\_\_\_\_\_  
Secretary/Clerk of the RPTA

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for RPTA

**ATTORNEY'S ATTESTATION**

Each of the undersigned attorneys acknowledges that: (1) he/she has reviewed the above Agreement on behalf of his/her respective client; and, (2) as to her/her client only, each attorney has determined that this Agreement is in proper form and is within her/her client's powers and authority granted under the laws of the State of Arizona.

By: \_\_\_\_\_  
Acting City Attorney  
Attorney for City of Phoenix

By: \_\_\_\_\_  
City Attorney  
Attorney for City of Tempe

By: \_\_\_\_\_  
Attorney for RPTA

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10/22/02